



Billing Code: 4710-13

DEPARTMENT OF STATE

22 CFR Part 51

[Public Notice: 9680]

RIN: 1400-AE01

Passports: Service Passports

AGENCY: Department of State.

ACTION: Interim final rule.

SUMMARY: This rule amends a regulation that establishes the different types of passports issued by the Department of State. A definition for special issuance passports is added. Amendments establish a new service passport, which may be approved for certain non-personal services contractors who travel abroad in support of and pursuant to a contract with the U.S. government, and make corresponding changes regarding official and diplomatic passports. The service passport will demonstrate a contractual relationship between the bearer's employer and the U.S. government as the reason for travel, thereby continuing to demonstrate the individual's support function on behalf of the U.S. government, but nevertheless signaling a more attenuated relationship with the U.S. government than that enjoyed by direct hire employees. The U.S. government incurs significant additional cost annually in delays and fees because foreign governments do not recognize contractors as doing work for the U.S. government. By more clearly demonstrating the attenuated relationship, the Department will eliminate such waste. The regulation is amended to establish the validity of the new service passport and clarify the grounds for invalidity of a special issuance passport.

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The Department of State will accept comments on this interim final rule until [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may make comments by any of the following methods, and you must include the RIN in the subject line of your message.

- Mail (paper, disk, or CD-ROM submissions): ATTN: RIN 1400-AE01, U.S. Department of State, Office of Passport Services, Bureau of Consular Affairs (CA/PPT), Attn: CA/PPT/L, 44132 Mercure Circle, P.O. Box 1227, Sterling, Virginia 20166-1227.
- E-mail: PassportRules@state.gov.
- Persons with access to the internet may view this rule and submit comments by going to www.regulations.gov, and searching for docket number DOS-2016-0065.

FOR FURTHER INFORMATION CONTACT: Michael Yohannan, Attorney Advisor, PassportRules@state.gov, (202) 485-6507.

SUPPLEMENTARY INFORMATION:

U.S. government activities overseas are often supported by non-personal services contracts, defined in 48 CFR 37.101 as contracts “under which the personnel rendering services are not subject, either by the contract’s terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the U.S. government and its employees.” U.S. citizens employed under these contracts, sometimes referred to as non-personal services contractors, carry out critical security, maintenance and other functions on behalf of the U.S. government, often under difficult

or dangerous circumstances. As a general rule these individuals conduct the travel associated with their contractual duties in support of the U.S. government with a regular passport. However, the Department is aware that there are limited circumstances in which non-personal services contractors traveling on regular passports experience difficulties when the purpose of their travel involves work conducted in support of the U.S. government. These difficulties annually cause significant cost to the U.S. government resulting from program delays and fees assessed to the Department. Contractors working on building projects who must travel intermittently out of country to renew visas are particularly affected by such difficulties because the U.S. government must bear the round-trip air travel costs, the hotel costs, and the per diem costs in addition to wage costs during often lengthy waits for a new visa. Foreign governments also charge large visa fees which then increase the costs of programs and building projects. In these instances, it is advantageous to the U.S. government to provide a passport that conveys that the traveler is abroad to conduct work in support of the U.S. government while simultaneously indicating that the traveler has a more attenuated relationship with the U.S. government that does not justify a diplomatic or official passport.

The Department of State is creating a new type of passport, the “service passport”, to fulfill this function. The Department is further clarifying the limited circumstances under which a non-personal or personal services contractor may receive an official or diplomatic passport when in receipt of such request from a federal agency. The Department estimates that this rulemaking will affect approximately 1,000 non-personal services contractors per year.

Under 22 U.S.C. 211a *et seq.*, the Secretary of State has the authority to make rules for the granting and issuance of passports. To add clarity to the types of passports issued by the Department, § 51.1 of 22 CFR is being modified to add a definition of “special issuance passport.” The Department is modifying § 51.3 to authorize issuance of service passports and to clarify the eligibility criteria for official and diplomatic passports. The Department is further modifying § 51.4 to clarify the validity of special issuance passports, including the new service passport, and clarify the grounds for invalidity of a special issuance passport.

Regulatory Findings

The Department is publishing this rule as a final rule, effective on the date of publication, pursuant to the “good cause” exemption of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B). The Department finds that delaying the effect of this rule until after notice and comment would be impractical, unnecessary, and contrary to public interest. The Department finds that providing these individuals with travel documents that indicate that their travel is in support of the U.S. government while also signaling a more attenuated relationship with the U.S. government than that enjoyed by direct hire employees provides a compelling justification for an immediate effective date of this rule.

In addition, this rulemaking is exempt from notice and comment pursuant to 5 U.S.C. 553(a)(1), because it involves a foreign affairs function of the United States. As noted above, contractors working on building projects often must travel intermittently out of country to renew visas, and foreign governments charge large visa fees whenever that occurs. The U.S. government must provide a passport that conveys that the traveler is

abroad to conduct work in support of the U.S. government while simultaneously indicating that the traveler has a more attenuated relationship with the U.S. government that does not justify a diplomatic or official passport.

Because this rule is exempt from 5 U.S.C. 553, it is effective on the date of publication. *See* 5 U.S.C. 553(d). However, the Department solicits – and welcomes – comments on this rulemaking, and will address relevant comments in a final rule.

Regulatory Flexibility Act

The Department, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities as defined in 5 U.S.C. 601(6).

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by state, local, tribal, or territorial governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996, since it will not result in an annual effect on the economy of \$100 million or more. *See* 5 U.S.C. 804(2).

Executive Order 12866 and 13563

The Department has reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Orders and finds that the benefits of this rule outweigh any costs. This rule is not economically significant under Executive Order 12866, section 3(f)(1), because it will not have an annual effect on the economy of \$100 million or more. The Department expects the rule's impact on the public to be minimal; therefore, the Department finds that the benefits of this rulemaking outweigh any costs. This rule has been designated as "non-significant" by the Office of Information and Regulatory Affairs.

Executive Order 13132

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department has determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Executive Order 13175—Effect on Tribes

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, Executive Order 13175 does not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose or alter any reporting or record-keeping requirements under the Paperwork Reduction Act. The individuals who will be applying for the new

service passports are those who would have applied for regular or official passports; therefore, the total burden on existing information collections is expected to remain constant. The OMB Control Numbers are 1405-0004 and 1405-0020.

List of Subjects in 22 CFR Part 51

Administrative practice and procedure, Drug traffic control, Passports and visas, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, 22 CFR part 51 is amended as follows:

PART 51—PASSPORTS

1. The authority citation for Part 51 continues to read as follows:

Authority: 8 U.S.C. 1504; 18 U.S.C. 1621; 22 U.S.C. 211a, 212, 213, 213n (Pub. L. 106-113 Div. B, Sec. 1000(a)(7) [Div. A, Title II, Sec. 236], 113 Stat. 1536, 1501A-430); 214, 214a, 217a, 218, 2651a, 2671(d)(3), 2705, 2714, 2721, & 3926; 26 U.S.C. 6039E; 31 U.S.C. 9701; 42 U.S.C. 652(k) [Div. B, Title V of Pub. L. 103-317, 108 Stat. 1760]; E.O. 11295, Aug. 6, 1966, FR 10603, 3 CFR, 1966-1970 Comp., p. 570; Sec. 1 of Pub. L. 109-210, 120 Stat. 319; Sec. 2 of Pub. L. 109-167, 119 Stat. 3578; Sec. 5 of Pub. L. 109-472, 120 Stat. 3554; Pub. L. 108-447, Div. B, Title IV, Dec. 8, 2004, 118 Stat. 2809; Pub. L. 108-458, 118 Stat. 3638, 3823 (Dec. 17, 2004).

2. Amend §51.1 by removing the alphabetical paragraph designations and adding the definitions for *non-personal services contractor*, *personal services contractor*, and *special issuance passport* in alphabetical order to read as follows:

§ 51.1 Definitions.

* * * * *

Non-personal services contractor, for purposes of this part, is an individual working under a non-personal services contract as defined in 48 CFR 37.101.

* * * * *

Personal services contractor, for purposes of this part, means a contractor who is working under a personal services contract as described in 48 CFR 37.104.

* * * * *

Special issuance passport means a regular passport for which no passport fee is collected pursuant to § 51.52, and a service, official or diplomatic passport as defined in § 51.3.

* * * * *

3. Revise § 51.3 to read as follows:

§51.3 Types of passports.

(a) *Regular passport*. A regular passport is issued to a national of the United States.

(b) *Service passport*. When authorized by the Department, a service passport may be issued to a non-personal services contractor traveling abroad to carry out duties in support of and pursuant to a contract with the U.S. government, when exceptional circumstances make a service passport necessary to enable the individual to carry out his or her contractual duties.

(c) *Official passport*. When authorized by the Department, an official passport may be issued to:

(1) An officer or employee of the U.S. government traveling abroad to carry out official duties, and family members of such persons;

(2) A U.S. government personal services contractor traveling abroad to carry out official duties on behalf of the U.S. government;

(3) A non-personal services contractor traveling abroad to carry out duties in support of and pursuant to a contract with the U.S. government when the contractor is unable to carry out such duties using a regular or service passport; or

(4) An official or employee of a state, local, tribal, or territorial government traveling abroad to carry out official duties in support of the U.S. government.

(d) *Diplomatic passport.* A diplomatic passport is issued to a Foreign Service Officer or to a person having diplomatic status or comparable status because he or she is traveling abroad to carry out diplomatic duties on behalf of the U.S. government. When authorized by the Department, spouses and family members of such persons may be issued diplomatic passports. When authorized by the Department, a diplomatic passport may be issued to a U.S. government contractor if the contractor meets the eligibility requirements for a diplomatic passport and the diplomatic passport is necessary to complete his or her contractual duties in support of the U.S. government.

(e) *Passport card.* A passport card is issued to a national of the United States on the same basis as a regular passport. It is valid only for departure from and entry to the United States through land and sea ports of entry between the United States and Mexico, Canada, the Caribbean and Bermuda. It is not a globally interoperable international travel document.

4. Revise § 51.4 to read as follows:

§ 51.4 Validity of passports.

(a) *Signature of bearer.* A passport book is valid only when signed by the bearer in the space designated for signature, or, if the bearer is unable to sign, signed by a person with legal authority to sign on his or her behalf. A passport card is valid without the signature of the bearer.

(b) *Period of validity of a regular passport and a passport card.* (1) A regular passport or passport card issued to an applicant 16 years of age or older is valid for ten years from date of issue unless the Department limits the validity period to a shorter period.

(2) A regular passport or passport card issued to an applicant under 16 years of age is valid for five years from date of issue unless the Department limits the validity period to a shorter period.

(3) A regular passport for which payment of the fee has been excused is valid for a period of five years from the date issued unless limited by the Department to a shorter period.

(c) *Period of validity of a service passport.* The period of validity of a service passport, unless limited by the Department to a shorter period, is five years from the date of issue, or so long as the bearer maintains the status pursuant to which the service passport is issued, whichever is shorter. A service passport which has not expired must be returned to the Department upon the termination of the bearer's status or at such other time as the Department may determine.

(d) *Period of validity of an official passport.* The period of validity of an official passport, unless limited by the Department to a shorter period, is five years from the date of issue, or so long as the bearer maintains his or her official status, whichever is shorter. An official passport which has not expired must be returned to the Department upon the

termination of the bearer's official status or at such other time as the Department may determine.

(e) *Period of validity of a diplomatic passport.* The period of validity of a diplomatic passport, unless limited by the Department to a shorter period, is five years from the date of issue, or so long as the bearer maintains his or her diplomatic status, whichever is shorter. A diplomatic passport which has not expired must be returned to the Department upon the termination of the bearer's diplomatic status or at such other time as the Department may determine.

(f) *Limitation of validity.* The validity period of any passport may be limited by the Department to less than the normal validity period. The bearer of a limited passport may apply for a new passport, using the proper application and submitting the limited passport, applicable fees, photographs, and additional documentation, if required, to support the issuance of a new passport.

(g) *Invalidity.* A United States passport is invalid as soon as:

- (1) The Department has sent or personally delivered a written notice to the bearer stating that the passport has been revoked; or
- (2) The passport has been reported as lost or stolen to the Department, a U.S. passport agency or a diplomatic or consular post abroad and the Department has recorded the reported loss or theft; or
- (3) The passport is cancelled by the Department (physically, electronically, or otherwise) upon issuance of a new passport of the same type to the bearer; or
- (4) The Department has sent a written notice to the bearer that the passport has been invalidated because the Department has not received the applicable fees; or

- (5) The passport has been materially changed in physical appearance or composition, or contains a damaged, defective or otherwise nonfunctioning chip, or includes unauthorized changes, obliterations, entries or photographs, or has observable wear or tear that renders it unfit for use as a travel document, and the Department either takes possession of the passport or sends a written notice to the bearer); or
- (6) The bearer of a special issuance passport no longer maintains the status pursuant to which the passport was issued; or
- (7) The Department has sent a written notice to the bearer, directly or through the bearer's employing agency, stating that a special issuance passport has been cancelled by the Department.

September 23, 2016 _____
Dated

David T. Donahue,
Acting Assistant Secretary,
Bureau of Consular Affairs,
Department of State.

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